

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15062 of Joyce D. Holmes McLean, pursuant to 11 DCMR 3107.2, for a variance from the off-street parking requirements (Sub-section 2101.1) for a flat in an R-5-A District at premises 438 Orange Street, S.E., (Square 5994, Lot 29).

HEARING DATE: July 21, 1989
DECISION DATE: July 28 and September 6, 1989

FINDINGS OF FACT:

1. The subject property is located on the north side of Orange Street, S.E. and is known as premises 438 Orange Street, S.E. The property is zoned R-5-A.

2. The square in which the property is located is bounded by Oakwood Street to the north, Orange Street to the south, 5th Street to the east and 4th Street to the west. Orange Street is in close proximity to St. Elizabeth's Hospital, Bolling Air Force Base, the Anacostia Freeway and Anacostia River.

3. The subject lot is improved with a semi-detached, two-story with basement dwelling which consists of 1,938 square feet. It was constructed in 1946. A 15 foot building restriction line is located to the front of the site, and a 16 foot public alley is located to the rear.

4. The subject structure consists of two apartment units. One unit occupies the first and second levels of the building. This unit contains three bedrooms, one bath, a living room, dining room and eat-in-kitchen. This unit is considered to be the primary unit. The second unit is located in the basement of the building. It has one bedroom, one bath, an eat-in-kitchen and a living room. The structure has had two units since 1947. Both units are presently occupied by tenants.

5. The subject dwelling was formerly used as a single-family residence by the applicant.

6. Each unit has separate entrances. The units are accessible from Orange Street and from the rear of the building. The rear entrance to the basement unit is currently not in use.

7. The internal stairway provides access from the first to the second levels of the building. The applicant states that there is no internal access from the first level to the basement. This passageway was blocked off and a pantry constructed in its place.

8. The R-5-A zone district permits matter-of-right single-family detached and semi-detached dwellings and, with the approval of the Board, low density development of general residential uses, including row houses, flats, and apartments to a maximum floor area ratio (FAR) of 0.9, a maximum lot occupancy of forty percent, and a maximum height of three-stories/forty feet.

9. In the 400 block of Orange Street, S.E., semi-detached single-family dwellings are located on the north side of the street and garden apartments are located on the south side. Except for the applicant's property, all of the semi-detached dwellings appear to be single-family homes. The subject site has two entrances from Orange Street, one of which is to the basement. This is the only building with two visible entrances from the front.

10. For a flat in the R-5-A zone district, the Zoning Regulations require one (1) parking space for each dwelling unit. The applicant is therefore required to provide two (2) off-street parking spaces.

11. The applicant is requesting a variance from the off-street parking requirements. The applicant's husband testified that the house sits on a hill and there is a 30-inch high wall in front of the house. There is therefore no room for parking spaces in front of the property. There is a small yard at the rear of the property and a wall that measures about 13 inches in height. The alley is narrow and is set below the yard. The applicant's husband indicated that these conditions make it impossible to provide parking in the front and extremely difficult, if not impossible, to put two parking spaces in the rear.

12. The applicant testified that parking is available on the street. She also indicated that her tenants do not have cars and therefore do not need off-street parking spaces.

13. The Office of Planning (OP), by report dated July 14, 1989 and through testimony at the hearing, recommended that the application be approved. OP noted the use of the property as a two-unit apartment with separate entrances. OP also noted that there are no parking restriction signs in the 400 block of Orange Street and that parking is available on and around Orange Street. The Office of Planning is of the opinion that the applicant has carried the burden of proof and recommends that the Board grant the application if

the applicant can demonstrate that the building was a flat prior to the adoption of the Zoning Regulations on May 12, 1958. The Board concurs with the opinion of the Office of Planning.

14. Advisory Neighborhood Commission (ANC) 8C, by report dated July 13, 1989 and through testimony at the hearing, expressed opposition to the requested variance. The ANC representative testified that there are so many cars in the area that parking spaces are scarce especially in the evenings after work. Another ANC representative testified that although the present tenants at 438 Orange Street do not have cars subsequent tenants may have cars and will need space to park. He indicated however that the apartment across the street provides parking for its tenants.

15. As further reasons for its opposition, the ANC states the following regarding reported drug activity at the subject property:

- a. 438 Orange Street is a public nuisance to the community.
- b. The variance would create an increase in traffic flow in the area.
- c. There have been numerous complaints to the Metropolitan Police Department against the tenants at that address.
- d. The owner has been informed of the above and has taken no action to correct the situation.

16. The ANC testified on behalf of the neighbors who attended the ANC meeting. These neighbors indicated that a great deal of drug activity takes place at the subject premises.

17. The Board disagrees with the ANC's reasoning and does not see the relevance of the drug issue to the variance request. The Board appreciates the concerns of the ANC and notes that the drug activity in the area is not a matter properly before the Board for consideration.

18. Several neighbors residing in close proximity to the subject property testified regarding the drug activity at the site, the undesirability of the tenants and their perception that the applicant fails to adequately screen prospective tenants. The neighbor residing at 440 Orange Street, the house attached to the subject premises, felt that the applicant should not be allowed to have off-street parking on the property. In her view, the applicant should use the property as a single-family residence, and that to allow parking on-site may encourage the applicant to further split the property inside into more apartment units.

19. The neighbors residing at 436 Orange Street, the house adjacent to the subject property, gave further testimony regarding drug activity at 438 Orange Street and indicated that parking should not be allowed on the premises.

20. The Board finds that the testimony of these neighbors was essentially in favor of granting the variance by not requiring off-street parking.

21. The applicant's husband noted the failure of the testifying neighbors to notify the applicant about their concerns with the tenants at the subject property. As a solution to the problems discussed at the hearing, the applicant offered not to renew the tenants' lease when it expires on August 21, 1989. An attempt will be made to lease to older people or someone recommended by the neighbors.

22. A petition, dated July 14, 1989 containing 38 signatures, was submitted in opposition to the application.

CONCLUSIONS OF LAW AND OPINION

Based on the foregoing Findings of Fact and evidence of record, the Board concludes that the applicant is seeking a variance from the off-street parking requirements for a two-unit flat in an R-5-A zoning district. The granting of such a variance requires a showing through substantial evidence of a practical difficulty upon the owner arising out of some unique or exceptional condition of the property such as exceptional narrowness, shallowness, shape or topographical conditions. The Board further must find that granting the requested relief will not be of substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan.

The Board concludes that the applicant has met its burden of proof.

The Board concludes that the topography and layout of the subject property create an exceptional condition for the owners making it virtually impossible to provide on-site parking.

The Board concludes that there is adequate space for parking on the street to accommodate the cars in the area. The Board concludes that there will be adequate parking to accommodate the cars of future tenants of the subject property. The Board further concludes that failure to provide off-street parking will not exacerbate the drug problem in the area. Therefore, it is the opinion of the Board that granting the requested variance will not be of

substantial detriment to the public good, nor will it substantially impair the purpose, intent and integrity of the Zone Plan.

The Board concludes that it has afforded the ANC "great weight" to which it is entitled. Accordingly it is ORDERED that the application is GRANTED.

VOTE: 4-0 (William F. McIntosh, Carrie L. Thornhill and Paula L. Jewell to grant; John G. Parsons to grant by proxy; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Executive Director

FINAL DATE OF ORDER:

FEB 28 1990

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



APPLICATION No. 15062

As Executive Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that a letter has been mail to all parties, dated FEB 28 1980, and mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Joyce D. Holmes McLean
James E. McLean
5404 Gunston Lane
Camp Spring, Md 20746

Alice James
Erika James
440 Orange Street, S.E.
Washington, D.C. 20032

Bernard Bailey
Leah S. Bailey
436 Orange Street, S.E.
Washington, D.C. 20032

Willie Lockridge, Chairperson
Advisory Neighborhood Commission 8-C
3125 M.L. King Avenue, S.E., Suite 2
Washington, D. C. 20020

A handwritten signature in dark ink, appearing to read "Ed Curry", is written over a horizontal line.

EDWARD L. CURRY
Executive Director

DATE: _____